



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Robert Schneider, Chair



Arnold
Schwarzenegger
Governor

Sacramento Main Office

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114

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<http://www.waterboards.ca.gov/centralvalley>

2 October 2006

Mr. Ladd Cahoon, Esq.
Law Offices of John D. Edgcomb
115 Sansome Street, Suite 805
San Francisco, CA 94104

COVENANT TO RESTRICT USE OF PROPERTY; 755 RIVERPOINT CIRCLE, WEST SACRAMENTO, YOLO COUNTY

Enclosed is the executed covenant to restrict the use of the property at 755 Riverpoint Circle in West Sacramento, Yolo County. The covenant must now be recorded with the County.

Thank you for your efforts in getting this environmental restriction finalized. If you have any further questions, please contact me at 916-464-4712 or by email at daustin@waterboards.ca.gov.

Duncan A. Austin, P.E.
Chief, Private Sites Cleanup Unit

cc: Frances McChesney, SWRCB

RECORDING REQUESTED BY:
Wal-Mart Stores, Inc.
702 S.W. 8th Street
Bentonville, AR 72716

WHEN RECORDED, MAIL TO:

Executive Officer
Regional Water Quality Control Bd.
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Re: Yolo County Assessor's Parcel number 014-793-022, formerly known as 705, 720 and 730 Riverpoint Circle, re-designated as 755 Riverpoint Circle, in the City of West Sacramento, California

This Covenant and Agreement ("Covenant") is made by and between Wal-Mart Stores, Inc. (the "Covenantor"), the current owner of property situated in West Sacramento, County of Yolo, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the California Regional Water Quality Control Board, Central Valley Region (the "Water Board"). Pursuant to Civil Code section 1471, the Water Board has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260 and waste as defined in the Water Code section 13050. The Covenantor and the Water Board, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property is described in Exhibit "A" attached hereto and incorporated herein by this reference and is more specifically described as Yolo County Assessor's Parcel number 014-793-022, formerly known as 705, 720 and 730 Riverpoint Circle, re-designated as 755 Riverpoint Court, in the City of West Sacramento, California

1.02. A limited portion of the Property, as shown on Exhibit "B" is impacted by lead waste (the "Impacted Portion of the Property").

1.03. Soil at the Impacted Portion of the Property was contaminated by the past operation of a lead battery recycling facility formerly located on the property. The Impacted Portion of the Property overlies an area that contained buried battery wastes, consisting of battery casings and debris that, in total, was buried from a few inches to 4.5 feet deep and covering an area approximately 150 feet wide by 530 feet long, in the area shown on Exhibit "B". Most of the approximate 530-foot length of the waste material is in the Impacted Portion of the Property; a portion also extends on to the neighboring property, Assessor's Parcel number 014-793-010. In 1989, under the oversight of the Water Board, approximately 500 cubic yards of waste material was removed, treated and replaced. The purpose of the remediation process was to reduce the level of soluble lead in the soils to below 5 parts-per-million. The treatment consisted of "fixing" the lead by saturating the excavated soil with a sodium-potassium silicate mixture and then applying a cementing agent. The soil was then tested for soluble lead levels and, after meeting the cleanup criterion, returned to the excavation.

1.04 After treatment to make the lead in the soils less soluble and thereby protect the underlying groundwater from lead contamination, the treated soil in the Impacted Portion of the Property still contained concentrations of total lead (not soluble) in excess of 1000 parts-per-million. Residential or commercial exposure to soils containing lead at those levels could result in adverse health effects to those exposed. The restrictions set forth in Article VI of this Covenant to Restrict Use of Property

are necessary to prevent human exposure to the lead in soils at the Property.

1.05 Three (3) groundwater monitoring wells were installed in proximity to the Impacted Portion of Property and groundwater was monitored from 1991 to 1995. Groundwater was encountered at a depth of between 10 and 15 feet below ground surface. Dissolved lead was not detected in the groundwater above the detection level of between 2 and 40 micrograms per liter. Ground water monitoring was discontinued, with Water Board concurrence, in 1995.

1.06 Arsenic, apparently resulting from historic application of pesticides, was recently discovered in soils on the Property, at concentrations ranging from 3.8 mg/kg to 110 mg/kg. The restrictions set forth in Article VI of this Covenant to Restrict Use of Property are necessary to prevent human exposure to the arsenic in soils at the Property.

ARTICLE II

DEFINITIONS

2.01. Water Board. "Water Board" means the California Central Valley Regional Water Quality Control Board and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04 Property. The Property is described in Exhibit "A" attached hereto and incorporated herein by this reference, and is more specifically described as Yolo County Assessor's Parcel number 014-793-022, also known as 755 Riverpoint Court, in the City of

West Sacramento, California. Notwithstanding the foregoing, if the boundary lines of the parcel which constitutes the Property are legally adjusted in the future, then following such adjustment, this Covenant shall be deemed to encumber only the parcel(s) that contain all or any portion of the Impacted Portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Water Board, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof. Each and all of the Restrictions are enforceable by the Water Board and by the Owner.

3.02. Binding upon Owners/Occupants. This Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Water Board, and for the benefit of Owner.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Impacted Portion of the Property. Giving a copy of this Covenant to such buyer or lessee would satisfy the notice requirements of this Section 3.03.

3.04. Incorporation into Deeds and Leases. The

Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property which are entered into on or after the date this Covenant is recorded in the Official Records of Yolo County, California.

3.05. Conveyance of Property. Not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances, and excluding transfers to affiliated parties), the new Owner shall provide to the Water Board notice of such conveyance. The Water Board shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

Pavement areas (e.g., parking lot) in association with the above-listed uses are excepted from the above prohibition.

4.02. Soil Management.

- (a) No activities that will disturb the soil at the Impacted Portion of the Property (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed without a Soil Management Plan and a Health and Safety Plan approved by the Water Board.
- (b) Any contaminated soils brought to the surface at the Impacted Portion of the Property by grading,

excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

- (c) The Owner shall provide the Water Board written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Impacted Portion of the Property.
- (d) Upon completion of development, all soils currently present at the Property shall be covered with impermeable surfaces or clean fill soil, so as to prevent exposure to soils currently present at the Property.
- (e) Upon completion of development, at least 80 percent of the surface of the Property shall be covered with impermeable surfaces designed to transmit surface water away from the Property, so as to minimize infiltration of precipitation into soils. Covenantor shall inspect the Property annually and document compliance with the conditions of this section and the condition of the impermeable surfaces. Covenantor shall submit to the Regional Board an annual written report that includes the results of the annual inspection. The Regional Board shall have an ongoing right to inspect the Property for adherence to this condition, and an ongoing right to require timely repairs if needed.

4.03 Access for Water Board. The Water Board shall have reasonable right of entry and access on and across all public portions of the Property, reasonable right of entry and access on and across any drive aisles and parking areas for access across the Property to the Impacted Portion of the Property, and the reasonable right of entry and access on and across drive aisles, parking areas and landscaped areas within the Impacted Portion of the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Water Board in order to protect the public health or safety,

or the environment.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to materially comply with any of the Restrictions specifically applicable to it within sixty (60) days after its receipt of written notice from the Water Board that describes a violation of the Restrictions shall be grounds for the Water Board to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Impacted Portion of the Property in violation of the Restrictions. Any material violation of this Covenant which is not cured within sixty (60) days after the Covenantor or Owner's receipt of written notice from the Water Board that describes the violation of this Covenant shall be grounds for the Water Board to file administrative and/or civil or criminal actions as provided by law.

Nothing in this Covenant shall limit the Water Board's authority under Division 7 (commencing with section 13000) of the Water Code or other applicable laws.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Water Board for a written variance from the provisions of this Covenant as they apply to all or any portion of the Property.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Water Board for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Water Board in the exercise of its discretion, this Covenant shall continue in effect

in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Water Board References. All references to the Water Board include successor agencies/Water Boards or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Yolo within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested, or by a recognized overnight carrier that provides proof of delivery, and shall be addressed as follows:

(a) If to Wal-Mart prior to opening for business: For any period of time prior to the date that Wal-Mart notifies the Water Board that it has opened a store on the Property (Wal-Mart having no obligation under this Agreement to do so), all notices and other communications shall be sent to the following addresses:

Wal-Mart Stores, Inc. Attn: Real Estate Manager (Ref: West Sacramento, CA; Store No. 3652-00) Dept. 8703	With a copy to: Wal-Mart Stores, Inc. Attn: Real Estate Legal Dept. (Ref: West Sacramento, CA; Store No. 3652-00)
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2001 S.E. 10 th Street Bentonville, AR 72716-0550	RECON Legal Dept. 8313 2001 S.E. 10 th Street Bentonville, AR 72716-0550
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(b) If to Wal-Mart after opening for business: For any period of time after the date that Wal-Mart has notified the Water Board that Wal-Mart has opened a store on the Property (Wal-Mart having no obligation under this Agreement to do so), all notices and other communications shall be sent to the following addresses:

Wal-Mart Stores, Inc. Attn: Property Manager (Ref: West Sacramento, CA; Store No. 3652-00) Dept. 9384 2001 S.E. 10 th Street Bentonville, AR 72716-0550	With a copy to: Wal-Mart Stores, Inc. Attn: President (Ref: West Sacramento, CA; Store No. 3652-00) 2001 S.E. 10 th Street Bentonville, AR 72716-0550
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(c) If to the Water Board:

Central Valley Regional Water Quality Control Board Attn: Cleanup Section Supervisor 11020 Sun Center Drive, #200 Rancho Cordova, CA 95670

It shall be the responsibility of the person giving notice to verify that the above address is current for the Water Board or successor agency. From and after the date on which any party acquires record fee title to the Property, then all notices and demands which are required or permitted to be given to the Covenantor and/or the Owner under this Covenant shall be addressed to such Owner at the address for the mailing of property tax statements for the Property as shown in the records of the Yolo County Assessor's Office, or to such other place as such Owner may from time to time designate by written notice to the Water Board in accordance with this Section 7.04.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included

herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Wal-Mart Stores, Inc.

By:

Name:

Title:

Date:



DANIEL MALLORY
Assistant Vice President

9-11-06

Water Board:

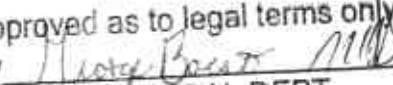
By:

Date:



PAMELA C. CREEDON, Executive Officer

9-27-06

Approved as to legal terms only
by 
WAL-MART LEGAL DEPT.
Date: 9-11-06

STATE OF Arkansas)

COUNTY OF Benton)

On this 11th day of September, in the year 2006,

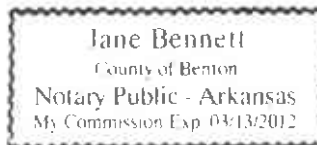
before me Jane Bennett, personally appeared

Daniel Mallory Assistant Vice President

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jane Bennett



PARCEL ONE:

THE "RESULTANT PARCEL B" AS CREATED BY THE CONDITIONAL CERTIFICATE OF COMPLIANCE RECORDED ON NOVEMBER 23, 2004, AS INSTRUMENT NO. 2004-0053787, OFFICIAL RECORDS, DESCRIBED AS:

ALL OF PARCEL 11, PORTIONS OF PARCELS 10 AND 15 AND A PORTION OF THE ABANDONED RIGHT-OF-WAY OF RIVERPOINT CIRCLE, AS SAID PARCELS AND CIRCLE ARE SHOWN AND SO DESIGNATED ON PARCEL MAP NO. 3866, FILED IN BOOK 10 OF PARCEL MAPS, PAGE 68, YOLO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

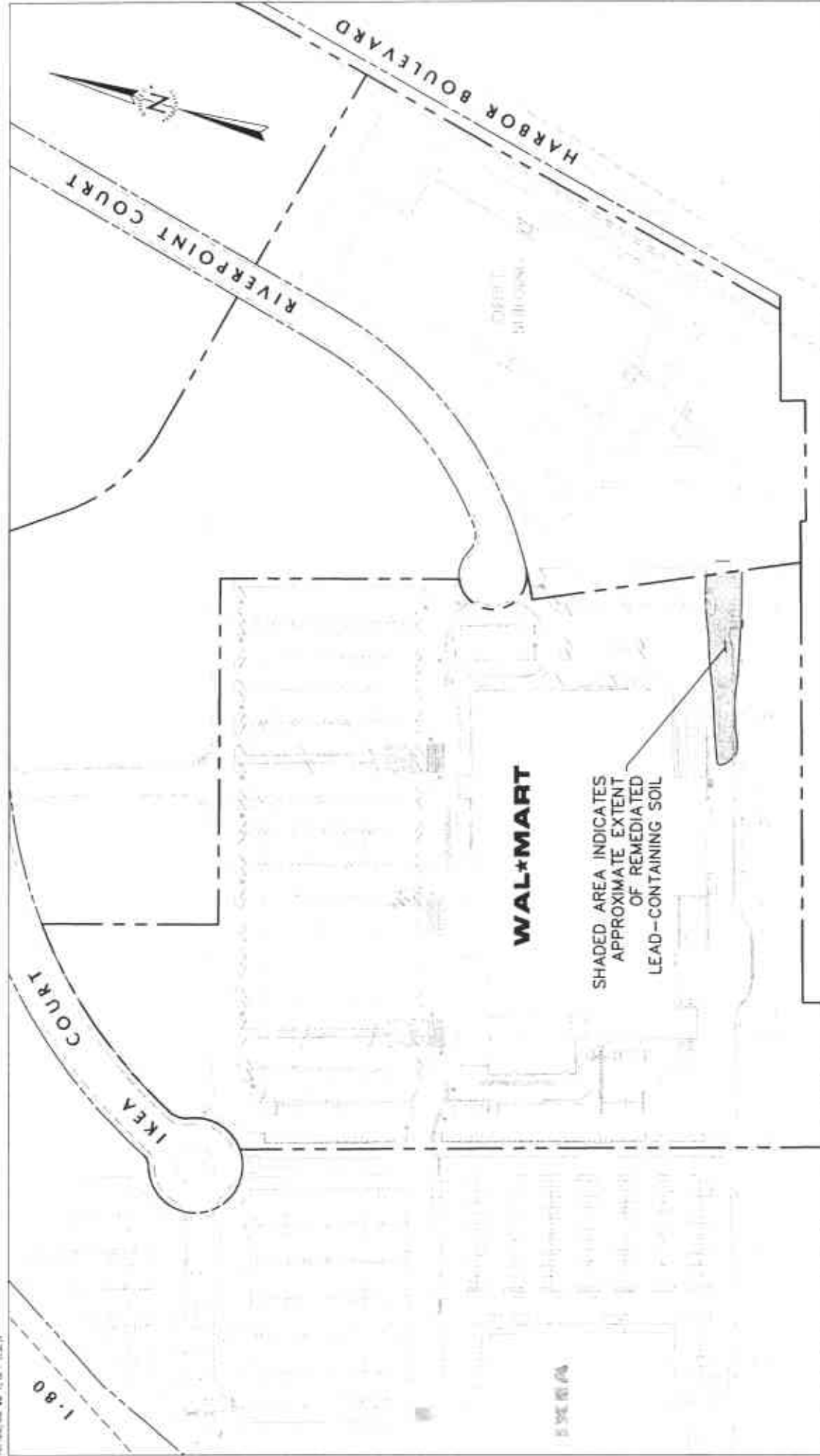
BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF SAID PARCEL 10 FROM WHICH THE SOUTHWESTERLY CORNER OF PARCEL 9, AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON SAID PARCEL MAP, BEARS SOUTH 73 DEGREES, 48' 03" WEST 1,454.85 FEET; THENCE FROM SAID POINT OF BEGINNING, NORTH 16 DEGREES, 11' 57" WEST 985.62 FEET; THENCE NORTHERLY ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, CONCAVE TO THE WEST, HAVING A RADIUS OF 80.00 FEET, A RADIAL BEARING TO THE CENTER OF SAID CURVE OF NORTH 35 DEGREES, 44' 06" WEST, A CENTRAL ANGLE OF 77 DEGREES, 06' 50" AND AN ARC LENGTH OF 107.67 FEET; THENCE NORTHERLY ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT, CONCAVE TO THE EAST, HAVING A RADIUS OF 42.00 FEET, A CENTRAL ANGLE OF 49 DEGREES, 31' 05" AND AN ARC LENGTH OF 36.30 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF SAID RIVERPOINT CIRCLE; THENCE, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, NORTHEASTERLY ALONG THE ARC OF A COMPOUND CURVE TO THE RIGHT, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 858.00 FEET, A CENTRAL ANGLE OF 26 DEGREES, 05' 51" AND AN ARC LENGTH OF 390.81 FEET; THENCE LEAVING SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, SOUTH 15 DEGREES, 42' 43" EAST 299.98 FEET; THENCE NORTH 74 DEGREES, 17' 17" EAST 588.62 FEET; THENCE SOUTH 15 DEGREES, 42' 43" EAST 404.91 FEET; THENCE WESTERLY ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 58.00 FEET, A RADIAL BEARING TO THE CENTER OF SAID CURVE OF SOUTH 22 DEGREES, 20' 28" EAST, A CENTRAL ANGLE OF 186 DEGREES, 51' 32" AND AN ARC LENGTH OF 189.16 FEET TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF RIVERPOINT CIRCLE; THENCE ALONG SAID RIGHT OF WAY LINE, SOUTHWESTERLY ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 682.00 FEET, A RADIAL BEARING TO THE CENTER OF SAID CURVE OF NORTH 29 DEGREES, 12' 00" WEST, A CENTRAL ANGLE OF 04 DEGREES, 41' 14" AND AN ARC LENGTH OF 55.79 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL 11; THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 11, SOUTH 23 DEGREES, 52' 36" EAST 457.56 FEET TO THE SOUTHEASTERLY CORNER THEREOF; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCELS 11 AND 10 THE FOLLOWING THREE (3) COURSES: (1) SOUTH 73 DEGREES, 48' 03" WEST 747.01 FEET; (2) SOUTH 16 DEGREES, 11' 57" EAST 33.00 FEET AND (3) SOUTH 73 DEGREES, 48' 03" WEST 245.70 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM A PORTION UNTO DAVID J. ELLIOT AND BONNIE JEANNE ELLIOT, HIS WIFE, AS JOINT TENANTS ALL OIL, GAS, SULFUR AND OTHER MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, VERTICALLY FROM THE SURFACE THEREOF, BUT EXCLUDING THEREFROM, ALL RIGHTS IN AND TO THE SURFACE AND

THE SUBSURFACE DOWN TO SAID DEPTH OF 500 FEET, AS EXCEPTED IN DEED FROM ROSE ORCHARD CORPORATION, A CALIFORNIA CORPORATION, ET AL., RECORDED SEPTEMBER 16, 1983 IN BOOK 1604 OF OFFICIAL RECORDS AT PAGE 71.

ALSO EXCEPTING THEREFROM A PORTION UNTO ROSE ORCHARD CORPORATION, A CALIFORNIA CORPORATION AN UNDIVIDED 1/2 INTEREST IN ALL OIL, GAS, SULFUR AND OTHER MINERAL AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, VERTICALLY FROM THE SURFACE THEREOF, BUT EXCLUDING THEREFROM, ALL RIGHTS IN AND TO THE SURFACE AND THE SUBSURFACE DOWN TO SAID DEPTH OF 500 FEET AS RESERVED BY ROSE ORCHARD CORPORATION, A CALIFORNIA CORPORATION IN THE DEED RECORDED SEPTEMBER 16, 1983 IN BOOK 1604 OF OFFICIAL RECORDS AT PAGE 71.

APN: 014-793-22



D&A
 Doucet & Associates, Inc.
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 Phone: (916) 443-1100
 Fax: (916) 443-1101
 www.doucetassociates.com
 Eureka, CA Huntington, AK Berkeley, CA

WAL*MART
 #3652, 755 RIVERPOINT COURT
 WEST SACRAMENTO, CALIFORNIA

EXHIBIT B
 DEED RESTRICTION